IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 223 OF 2006

IN

STAMP NUMBER MAIN NO. 1301 OF 2006

SHRI RAYMOND MORENHAS ....Applicant

Versus

SHRI RAJANNA S. KOTHUR AND ANR., ...Respondents

Mr. Arun Bras De Sa, Advocate for the Applicant.

Coram:- N. A. BRITTO, J.

Date:- 15th June, 2006

P.C.

Heard Shri Arun Bras De Sa, the learned Counsel on behalf of the applicant.

2. The applicant is a Complainant who seeks Special Leave to Appeal against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881, by Judgment dated 23.03.2006 of the learned J.M.F.C., Panaji. The complaint was based on the allegation that the cheque which the accused had issued dated 30.12.2002, in the sum of Rs.1,65,000/-, had bounced. The Complainant had examined himself. The accused had stepped into the witness box and has also examined D.w.2/Salvador Pinto, the Manager of Mapusa Urban Co-op. Bank Ltd. The Complainant in the couse of his cross examination, admitted that the accused had been taking money from him from the year 1998. The learned J.M.F.C. also found from the evidence of D.w.2/Salvador that the last amount advanced by the Complainant to the accused was by cheque dated 23.08.1999, and on the basis of the same, came to the conclusion

that the complaint filed by the accused in respect of the cheque was issued in the first week of December, 2002 and was dated 30.12.2002, was beyond the period of limitation of three years. In other words, based on the explanation below Section 138 of the Act, the learned J.M.F.C. came to the conclusion that the said cheque dated 30.12.2002, issued by the accused to the Complainant, was issued towards a time barred debt.

3. Shri Bras De Sa, the learned Counsel on behalf of the Complainant submits that in the cross examination of the Complainant, the accuserd had posed a question whether the Complainant had other documents like hundi or a promissory note executed by the accused in favour of the Complainant, which question the learned J.M.F.C. disallowed. In my view, it does not lie in the mouth of the Complainant to make any grievance as regards the said question being disallowed. In case the Complainant had a hundi dated 12.06.2000, as stated on behalf of the Complainant by learned Advocate Shri Bras De Sa, the Complainant ought to have produced the same along with his affidavit in evidence. It is also submitted on behalf of the Complainant that the accused had placed another order with the complaint for supply of furniture but, as far as this aspect goes, the Complainant had categorically stated that the accused had placed an order for furniture with the Complainant in the sum of Rs.87,000/-, in the year 2002, through Manipal Finance Company and the Complainant was paid the amount due on the said order of Rs.87,000/- through Manipal Finance Company. In other words, the said transaction had nothing to do with the money advanced by the Complainant in the sum of Rs.1,65,000/-, towards the repayment of which the accused had issued the said cheque dated 30.12.2002. In the light of the admission of the Complainant that the last amount was paid in the year 1998 or the finding of the learned J.M.F.C. that the last cheque issued by the Complainant to the accused was dated 23.08.1999, the statement of the accused in his examination in chief that the accused had placed an order for furniture worth Rs.1,65,000/- in the year 2000, would be irrelevant.

4. Considering the evidence of the Complainant, the view held by the

learned J.M.F.C. in acquitting the accused, could not be faulted. The learned J.M.F.C. in coming to the said conclusion had referred to the Judgment of this Court in the case of Smt. Ashwini Satish Bhat v. 1. Shri Jeevan Divaka Lolienkar & anr. (1999(1) Goa L.T. 408), which view has again been subsequently followed by this Court in unreported Judgment dated 20.04.2006, in Criminal Revision Application No. 3/2006, in the case of Narendra V. Kanekar v. The Bardez Taluka Co-op Housing Mortgage Society Ltd & anr. At present, there is preponderance of judicial opinion in support of the view that if only a cheque is issued in discharge of legally enforeceable debt or other liability, that Section 138 of the Act is attracted but, if the cheque is issued for discharge of time barred cheque and it is dishonoured, the accused cannot be convicted under Section 138 of the Act.

5. In the light of the above, this is not a fit case to grant leave to appeal. Application rejected.

N. A. BRITTO, J.

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